

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, )  
                              )  
                               Plaintiff, )  
                              )  
vs.                          ) 3:12-CR-00234-B  
                              )  
QUAYLAN ANDERSON,        )  
                              )  
                               Defendant. )

SENTENCING HEARING  
BEFORE THE HONORABLE JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE  
JULY 25, 2013

A P P E A R A N C E S

For the Government:

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proceedings reported by mechanical stenography,  
transcript produced by computer.

1 (In open court at 1:50 p.m.)

2 THE COURT: Next case up is Quaylan  
3 Anderson, 3:12-CR-234. For the government?

4 MS. MILLER: Lisa Miller for the  
5 government, Your Honor.

6 MR. McLARTY: Carlton McLarty for  
7 Mr. Anderson.

THE COURT: Good afternoon, Mr. Anderson.

9 THE DEFENDANT: Good afternoon.

10 THE COURT: As you know, you are here for  
11 the sentencing in your case today. Before we get  
12 started, I want to go through the papers that have  
13 been filed in connection with this and what I have  
14 reviewed and relied upon, so I will be asking you  
15 questions about that.

16 Before we get started, I'm going to place  
17 you under oath. So raise your right hand, please.

18 (The Defendant was sworn.)

19 THE DEFENDANT: I do.

20 THE COURT: Okay. Mr. Anderson, have you  
21 had a chance to review thoroughly the presentence  
22 report in this case with Mr. McLarty?

23 THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. And you have had a chance to do that before today.

1                   THE DEFENDANT: Yes, ma'am.

2                   THE COURT: All right. Mr. McLarty filed  
3 some objections to the presentence report with  
4 regard to your criminal history category, primarily,  
5 but also a couple of other issues. Have you had a  
6 chance to review those with him?

7                   THE DEFENDANT: Yes, ma'am.

8                   THE COURT: Okay. There was an addendum  
9 filed to the presentence report; in other words, a  
10 supplement based upon Mr. McLarty's objections.  
11 Have you had a chance to review that with him?

12                  THE DEFENDANT: Yes, ma'am.

13                  THE COURT: Okay. I also have a  
14 sentencing memorandum, as well as what has been  
15 described as supplemental sentencing material,  
16 Documents 54 and 55 in the docket respectively,  
17 filed on your behalf by Mr. McLarty. Have you had a  
18 chance to review those with him, as well?

19                  THE DEFENDANT: Yes, ma'am.

20                  THE COURT: Okay. Any questions about any  
21 of these materials?

22                  THE DEFENDANT: No, ma'am.

23                  THE COURT: Mr. Anderson, you were in here  
24 a while ago for a pretty lengthy hearing in this  
25 case, so I know you have been in court and have had

1       a chance to familiarize yourself with the charges  
2 and whatnot. But I want to make sure, as you stand  
3 here today, you're telling me you have had a full  
4 chance to review everything and to prepare with  
5 Mr. McLarty for this sentencing hearing.

6                  THE DEFENDANT: Yes, ma'am.

7                  THE COURT: Let's go ahead, then, if there  
8 is nothing else on the paperwork the Court is  
9 presented with to review, let's talk about your  
10 objections.

11                 Mr. McLarty.

12                 MR. McLARTY: Thank you, Your Honor. Your  
13 Honor, let me go first to the -- my objection number  
14 three, school records. I was provided today with a  
15 copy of his diploma. I would just submit that to  
16 the Court. We would like a ruling on that. And the  
17 reason -- it seems like a minor point, but when a  
18 person doesn't have -- is found not to have a GED in  
19 the Bureau of Prisons, they try to put them in the  
20 GED program. And Quaylan is really beyond that, and  
21 he wants to get into other programs. So we want the  
22 record to reflect that he actually does have his  
23 high school diploma.

24                 THE COURT: Has the government had a  
25 chance to see the diploma?

1 MS. MILLER: Yes, Your Honor.

2 THE COURT: And probation?

3 PROBATION OFFICER MS. MORRIS: Yes, Your  
4 Honor.

5 THE COURT: Any dispute about the --

6 MS. MILLER: No.

7 THE COURT: Okay. All right. Then I  
8 would sustain that objection and find, in fact, that  
9 it has now been clarified that he did graduate from  
10 high school. And what high school was that?

11 MR. McLARTY: This was the Texans Can  
12 Academy at Paul Quinn College with the -- they  
13 awarded this high school diploma by order of the  
14 State Board of Education, June 11, 2007.

15 THE COURT: All right. Thank you. Let's  
16 move back to your objections.

17 MR. McLARTY: Your Honor, the objection  
18 goes to the criminal history calculation. I would  
19 argue that the Probation Department, in their  
20 addendum, reduced it by one point. So I think we're  
21 at -- we've got -- according to the addendum, there  
22 are 13 points. I think there ought to be another  
23 point or two taken off.

24 THE COURT: Before we get into that, let's  
25 just make sure that we are clear on the paragraphs

1 that you are referring to. You're okay with the  
2 Probation Department's resolution of 40 and 42,  
3 which basically has him with two points on paragraph  
4 40 and striking it down from two to one point on  
5 paragraph 42. Is that right?

6 MR. McLARTY: Well, they took it down to  
7 one point on paragraph 42. I wouldn't disagree with  
8 that.

9 THE COURT: Okay. And then we are talking  
10 about paragraph 44.

11 MR. McLARTY: 44.

12 THE COURT: And I think we do need to hear  
13 a little bit more detail about that. This has to do  
14 with a deferred adjudication, a probated sentence  
15 that he received in what appears to be in a  
16 different time frame that was possibly thereafter  
17 revoked on a similar time frame as prior to.

18 And as I understand it from just looking  
19 at the presentence report -- and we need to get this  
20 clarified -- is that when he got his deferred  
21 adjudication probation, the eight years in the  
22 paragraph 44 aggravated assault case, that he was  
23 subjected to SAFFP for 12 months. Thereafter is  
24 when the revocation occurred, after he got out of  
25 SAFFP, and that's what I need to have clarified. Go

1 ahead.

2 MR. McLARTY: Well, I don't think he's  
3 ever been -- the commonality in -- my understanding  
4 of the time frame is, in essence, he was on three  
5 deferred adjudications, and there is a commonality  
6 on the placement into SAFFP.

7 If you look at each and every -- the  
8 factual rendition on each one, in paragraph 44, as a  
9 condition of probation, this is the last paragraph  
10 of the -- the next-to-the-last paragraph on the  
11 factual summary of the aggravated assault conviction  
12 in paragraph 44. As a condition of probation,  
13 ordered into confinement and treatment of not less  
14 than 90 days or more than 12 months in SAFFP. The  
15 records reflect that he entered SAFFP on October 13,  
16 2010.

17 If you look at the factual rendition on  
18 paragraph 42, again, we have the October 13th --  
19 next-to-the-last paragraph, October 13th, 2010,  
20 placement into SAFFP. And then we look at the very  
21 first case where he's on deferred adjudication, and  
22 we see again the October 13th, 2010, placement to  
23 SAFFP.

24 THE COURT: October 13th, 2010, in  
25 paragraph 40? Are you sure about that?

1                   MR. McLARTY: In paragraph -- well --  
2 well, he had two, but he definitely did have yet  
3 another one on -- in the very next paragraph it does  
4 reference yet another SAFPF placement. And that's  
5 in the next-to-the-last paragraph on the paragraph  
6 regarding criminal history number 40.

7                   So it seems like one trip to SAFPF is  
8 elevating his criminal history by three points. And  
9 I don't know that he ought to be getting three  
10 points for each one. I really have never had  
11 this -- I don't think the exact -- I couldn't find a  
12 case with the exact same circumstances, because I  
13 think this is pretty unusual to get three deferred  
14 adjudications running at the same time.

15                  THE COURT: I think the question I have is  
16 that in 40, the offense was September the 25th of  
17 '06. He got the ten years deferred adjudication on  
18 that date. Moving then to 41, for an offense of  
19 November 15th of '07, on that same date as paragraph  
20 40, the '06 offense, he was given ten years deferred  
21 adjudication. And he was also sentenced in January  
22 of 2010 to confinement for 90 days. In the  
23 paragraph 40 case, the same date in January 2010, he  
24 was sentenced to 90 days confinement.

25                  In the 44 case, it's a 2010 case, and it

1 shows him getting deferred adjudication  
2 August 19th of 2010, which is different from the  
3 previous dates and then a violator's warrant coming  
4 out for him in 2011.

5 I don't see the commonality. I guess what  
6 I am saying is, I don't see that this third case  
7 from the presentence report suggests that he was  
8 looking at SAFFP and confinement therefore on the  
9 same date. It looks more like he got the 90 days  
10 SAFFP at the time he got the deferred -- eight years  
11 deferred on April the 27th. And I want to hear from  
12 both sides on this. That's my confusion. I don't  
13 think it's clear.

14 MR. McLARTY: Let's look -- looking  
15 closely at paragraph 44, number 44, that's the  
16 aggravated assault. It's correct that on 8/19,  
17 August 19, 2010, he was sentenced to eight years  
18 deferred adjudication, probation. On 7/14/2011, the  
19 probation violation warrant was issued; that's still  
20 pending. So his probation has actually never been  
21 revoked.

22 THE COURT: The point is, if you went to a  
23 boot camp type of facility as part and parcel of the  
24 2010 sentencing, then I think the case authority  
25 would support the points.

1                   MR. McLARTY: Well, I guess my point would  
2 be that, in the discussion of the offense listed in  
3 paragraph 44, we go down and find that as a  
4 condition of his probation he was ordered into  
5 SAFPF, and he entered the SAFPF on October 13th,  
6 2010, which is the commonality with the other two  
7 cases.

8                   THE COURT: I'm just not seeing the  
9 October 2013 dates in the other two paragraphs.

10                  MR. McLARTY: Okay. On paragraph -- on  
11 criminal history in 42, I guess in the -- it's the  
12 next-to-the-last paragraph in that factual summary  
13 that begins August 19th, his conditions were again  
14 modified. And the quotation says that probation  
15 records reflect that he entered SAFPF on  
16 October 13th, 2010.

17                  THE COURT: It's a little confusing. Let  
18 me hear from the government, and then maybe  
19 probation can shed some light on it.

20                  Ms. Miller, do you have a position on  
21 this? And I will ask Mr. McLarty and Mr. Anderson  
22 to step aside for a moment so we can get this  
23 cleared up.

24                  MS. MILLER: Honestly, Your Honor, I'm not  
25 sure how much more help or if I can be helpful at

1 all. It was a little unclear to me initially. But  
2 I know from -- so I would defer certainly to the  
3 probation office, because they are just really  
4 strong in terms of the criminal history  
5 calculations.

6           But I did read through the application  
7 notes that were cited there, and it does seem to  
8 make sense that in paragraphs 40 and 42 it seemed  
9 that he was sentenced to confinement for 90 days on  
10 each of those cases at the same time, as the Court  
11 pointed out.

12           And then in paragraph 44, it appears that  
13 it is a completely new offense, a completely new  
14 sentence, and in that instance he was sentenced to  
15 the -- to the SAFPF on October 13th. Although, it  
16 is correct what Mr. McLarty is saying, that there is  
17 a mention of him having entered that facility in  
18 paragraphs 40 and 42, but that is after the 90 days  
19 that would have already been served back in January  
20 of 2010.

21           So based on that, it appears to me that  
22 the way that the probation office has calculated the  
23 criminal history points and based on the application  
24 notes in the guidelines that that's correct.

25           THE COURT: Thank you. Ms. Morris, did

1 you have anything on this? I obviously know that  
2 you, as usual, prepared a thorough report. But your  
3 position is, now that we have heard from both sides  
4 on this --

5 MS. MILLER: If I can say one other thing,  
6 Your Honor. It appears to me from the records there  
7 have been two separate instances of confinement, one  
8 that occurred sometime in January on paragraphs 40  
9 and 42, and then another that occurred with respect  
10 to the sentencing in paragraph 44.

11 THE COURT: All right.

12 PROBATION OFFICER MS. MORRIS: Well, Your  
13 Honor, there is definitely -- I support the  
14 addendum. I went back through and took off the one  
15 point. We have, you know, several convictions.  
16 There was, I think, two terms of treatment that come  
17 through; that is the result. Some as revocation  
18 punishments and then -- or you know, as sanctions,  
19 and then some as original sentences, which is why  
20 they are countable more so than -- it's not  
21 double-counting for the two revocations. It is a  
22 separate sentence -- it's part of the original  
23 sentence in the original convictions.

24 THE COURT: Paragraph 44, eight years  
25 deferred came with it at that very time a, SAFPF

1 confinement condition.

2 PROBATION OFFICER MS. MORRIS: Right. So  
3 that was an original sentence as opposed to part of  
4 the revocation.

5 THE COURT: All right. Mr. McLarty, if  
6 you and your client will come back up. Let me take  
7 a look at this for a minute. So with the points  
8 that everyone agrees has been given the defense back  
9 in this case, we have gone to a criminal history  
10 category of 13; is that right?

11 MR. MCLARTY: Yes, Your Honor.

12 THE COURT: And with your position, it  
13 would be another two down.

14 MR. MCLARTY: At least another one down,  
15 and that would make a difference. A 12 would put  
16 him in Category V rather than VI.

17 THE COURT: I agree with what the  
18 Probation Department has set out in their addendum,  
19 and I think it is certainly more than plausible from  
20 the discussion in the presentence report.

21 Having said that, I think that we don't  
22 have the actual records. And because we're looking  
23 at a very high guideline range here anyway, I'm  
24 going to go ahead and give you the one point  
25 differential on that particular point just because

1 it's still a little bit confusing, although I do  
2 think I would be justified to deny that request.

3                 But again, without the specific records, I  
4 don't see a reason to create another issue on  
5 appeal. So I will go ahead and grant the extra  
6 point, which takes him to a 12 with a criminal  
7 history category of V and takes the range from 235  
8 to 293. Everyone agree that that is the range with  
9 that?

10               MS. MILLER: Yes, Your Honor.

11               MR. McLARTY: Let me double-check.

12               Yes, Your Honor.

13               THE COURT: Okay. What else did you have,  
14 Mr. McLarty, by way of objections?

15               MR. McLARTY: That would be all I had on  
16 my objections, Your Honor. I think we have covered  
17 all -- I think the probation officer responded to my  
18 other point, which was that the other case never was  
19 filed.

20               THE COURT: I have a question -- yes, it  
21 was never filed. I guess the question would be --  
22 and the law is a little bit unclear on this with  
23 regard to the aggravated robbery arrest. I just  
24 certainly don't plan on relying on that to depart or  
25 vary above the top of the advisory guidelines. But

1 I do want to make sure that I know what the position  
2 is of the defense on that, that it wasn't pursued,  
3 but it is your position that it's absolutely  
4 incorrectly in here. Is there incorrect  
5 information? Because there is some detail involved  
6 in the presentence report that it looks like it  
7 certainly at least was an arrest that occurred under  
8 certain circumstances indicating aggravated robbery,  
9 aggravated assault.

10 MR. McLARTY: I don't have the records,  
11 Your Honor, but --

12 THE COURT: I'm sorry, 57.

13 MR. McLARTY: -- my understanding -- well,  
14 if I could have just a second. I don't have the  
15 record with me, but according to my investigator, it  
16 was -- it didn't get through the grand jury.

17 THE COURT: All right. Let's move on,  
18 then, to the rest of your argument. The Court  
19 adopts the presentence report and the addendum as  
20 modified by the Court's ruling on the defense  
21 objections. And as I mentioned, we are then at an  
22 offense level of 34 with a criminal history category  
23 of V, 235 to 293 guideline range. All right.

24 Mr. McLarty.

25 MR. McLARTY: Thank you, Your Honor. Your

1 Honor, at this time I would like to, with the  
2 Court's permission, turn to the issue of my motion.  
3 I think we have agreed to what the guidelines are.  
4 I would like to turn to the issues presented by my  
5 request for a departure variance.

6 Your Honor, I've got several family  
7 members here. Rather than speaking to the Court,  
8 Ms. Anderson, Mamie Anderson, Quaylan's grandmother,  
9 has written a letter. She would like the letter to  
10 stand in for her statement to the Court and  
11 basically just speaking for the family. And with  
12 her permission, I would like to start off just by  
13 reading her letter.

14 THE COURT: That's fine, as long as you  
15 have given Ms. Miller a chance to look at it.

16 MR. McLARTY: Actually, I haven't. I will  
17 be glad to let her take a quick look at it.

18 And the letter is dated today, Your Honor.  
19 And Ms. Anderson, Mamie, is here in court. And the  
20 letter is to the Honorable Judge Boyle, asking for  
21 the mercy of the Court: This is to inform you of  
22 who Quaylan Anderson really is. I, Mamie Anderson,  
23 the grandmother of Quaylan Anderson, know him better  
24 than anyone because I raised him from 11 months old,  
25 along with his two siblings. The oldest one at that

1 time was two, the baby was 3 months when I took them  
2 in.

3 Their mother was on drugs at the time of  
4 carrying them. She is totally blind and paralyzed,  
5 and she doesn't even know that she's in the world.  
6 Their father was in the penitentiary. But Quaylan  
7 was getting ready to help him in his -- in his  
8 business affairs.

9 Quaylan is a very loving person, not  
10 because he is my grandson, but because that's who he  
11 is, always trying to help someone, especially if he  
12 felt they were in trouble. He strived hard in  
13 school to be successful, but with his condition,  
14 MHMR, sometimes it was very stressful.

15 But he loved me, and with me showing him  
16 love and encourage him, he insist -- he finished  
17 high school with a lot of hard work in a few years  
18 later due to his mental ability.

19 I still believe God can still be  
20 successful -- I still believe to God that he can  
21 still be successful. I am asking you and the Court  
22 to have mercy on him in his sentencing. I yet  
23 believe in God and know that God is a God of another  
24 chance.

25 I pray that he can remain in Seagoville

1 because of my disability or at least nearby. We, as  
2 his family, love him, and we want to correspond with  
3 him as much as possible. If he is placed a long way  
4 off, with me having knee replacement on both knees,  
5 it will be very impossible. Respectfully, Mamie  
6 Anderson.

7 And that, Your Honor, I would like to be  
8 considered as the statement on behalf of the family.

9 THE COURT: Well, it will be considered.

10 MR. McLARTY: Thank you.

11 Your Honor, several points. Category V,  
12 guideline range 235 to 293 months. I think I would  
13 like to just start my remarks by asking the Court to  
14 consider what is the heartland of a case like this?  
15 What is the average? What is the norm? And I sent  
16 you the article just to stress what I think the  
17 heartland of these type of cases are.

18 This is a child pornography production  
19 case. And my view of this kind of offense is --  
20 is -- comes from several years of handling,  
21 possession of child pornography cases,  
22 transportation and distribution. It's one of the  
23 more unpleasant aspects of the job, to have to go  
24 out to the FBI lab or cart or wherever and look at  
25 these heartbreaking images of these eight-year-olds

1 and three-year-olds. And you do that and you  
2 wonder, who is making that stuff?

3                   And that -- that's the heartland of a  
4 child pornography production case. The people who  
5 are taking the pictures of the eight-year-old  
6 children and the three-year-old children and selling  
7 them or distributing them or putting them on the  
8 Internet for the whole world to watch. This is not  
9 that case.

10                  You've got Quaylan Anderson, who the  
11 probation officer describes him as borderline  
12 intellectual functioning. He's been in Special Ed  
13 all of his life.

14                  He meets this young woman and tells him,  
15 hey, I'm 17; I'm running away. At the time he  
16 believed her. When he and his friends found out,  
17 well, she's really not that old, you know, they took  
18 steps to take her back.

19                  So this is not -- and then the pictures  
20 themselves, they are obviously production quality  
21 low. It's, you know -- to me, it's, you know,  
22 obviously illegal. He knows it's illegal. She's  
23 certainly not old enough, even if she was 17; that's  
24 illegal. But it is so far away from the heartland  
25 of these kind of cases and this kind of shocking and

1 heartbreaking stuff that we see and that we have to  
2 go look at sometimes. So I do think that he's  
3 outside of the heartland there.

4 Just because of his background, he's  
5 really not sophisticated in terms of knowing that --  
6 you know, if he had any sense, he wouldn't have  
7 messed around with a 17-year-old runaway anyway.

8 But anyway, he has accepted responsibility  
9 and pled guilty before this Court. And I do think  
10 that, considering just what type of case this is,  
11 what type of person he is, that under the 3553(e)  
12 factors, that a sentence at the -- even at the low  
13 end of the range, it's almost a 20-year sentence.

14 And I think -- I think, in this case, the  
15 mandatory minimum sentence of 15 years is a harsh  
16 and hard sentence. Maybe all these deferred  
17 adjudications didn't serve him well. He's never  
18 done any significant amount of time at all. . . .  
19 maybe if he had. But you know, I suppose, because  
20 of his intellectual history and so forth, that the  
21 judges I guess gave him a bit of a break. But I do  
22 think that in this case your range is limited. It  
23 can't be any lower than 15. So I would ask the  
24 Court to consider departure in the case.

25 THE COURT: Thank you, Mr. McLarty.

1                   Mr. Anderson --

2                   THE DEFENDANT: Yes, ma'am.

3                   THE COURT: -- you have a right to speak  
4 for yourself. What would you like to say?

5                   THE DEFENDANT: What I have to say --  
6 well, I do ask for your leniency in the case. I  
7 mean, like I say, I take full responsibility for not  
8 being aware of my surroundings and more -- serving  
9 my surroundings. So even though I was deceived  
10 about her age, I still blame myself on that part.

11                  And I still have a lot of future goals and  
12 plans and dreams to accomplish, so if -- if you do  
13 decide to sentence me, to just leave me room so I  
14 can maybe get out and make something of myself.

15 That's all I ask.

16                  THE COURT: Let me hear from the  
17 government, and I will ask the two of you to stand  
18 aside.

19                  Make sure you are not texting in court.  
20 Those machines are not allowed in here.

21                  Ms. Miller.

22                  MS. MILLER: Thank you, Your Honor. With  
23 respect to -- with respect to this defendant's  
24 motion for downward variance and this notion that  
25 this case is somehow outside of the heartland of

1 cases, I could not more emphatically or strongly  
2 disagree with that.

3 If you look at the actual offense level  
4 that this defendant has, it addresses some of those  
5 things that Mr. McLarty was presenting before the  
6 Court. You know, had he been in a position where he  
7 was producing child pornography of a much younger  
8 child under similar circumstances than Mr. McLarty  
9 is talking about, his guideline range would be  
10 significantly higher than what it is, at least in  
11 terms of its offense level.

12 The offense level that he has at this  
13 point is offense level 34, which, if he had no  
14 criminal history category -- which is frankly  
15 generally the kind of defendant we see in these  
16 kinds of cases -- his guideline range would actually  
17 be below the mandatory minimum. But, you know, we  
18 take into account more than what the offense level  
19 is.

20 But even -- but even considering that,  
21 when you look at the facts of this case, before we  
22 even get to the history and circumstances of this  
23 defendant -- and I will get to that in a moment --  
24 there is nothing that isn't shocking about this  
25 case. It's different than some of the cases that

1 Mr. McLarty wanted to talk about. But the facts of  
2 this case are -- are -- are ugly in the sense that  
3 this is a defendant who chose to exploit -- we're  
4 talking about a 13-year-old young girl. She hadn't  
5 been 13 years old that long. I understand that she  
6 told him she was 17 years old, and he wants everyone  
7 to believe that's what he thought. But I think some  
8 of the facts in the presentence report reflect that  
9 there was quite a bit of doubt about this  
10 13-year-old girl claiming to be 17 years old, that  
11 people didn't believe she was 17 years old. And he  
12 capitalized on her vulnerability by -- I mean, he  
13 was only with this girl for three days. And within  
14 hours, he was having sexual intercourse with her;  
15 she was being sexually assaulted.

16 Within hours and days he had devised a  
17 plan to pimp her out and, in fact, did to one of his  
18 friends, had her perform oral sex on one of his  
19 friends for \$10. He took that money. And not only  
20 pimping her out, he had sexual explicit photos taken  
21 of her. He took videos, himself, of him engaging in  
22 sexual assault with this girl, and he had images  
23 that were to be taken for the purpose of advertising  
24 her as a prostitute.

25 So this notion -- and I can certainly

1 appreciate and sympathize with his family. I know  
2 this has got to be a very difficult situation. But  
3 I think Quaylan Anderson, and the facts of this case  
4 show, is not a person who wants to be helpful, who  
5 is a loving person, but this is someone who  
6 knowingly chose to exploit a child and to do so in  
7 some of the worst ways.

8                 And even if we accept that he somehow  
9 believes she was 17 years old, which I don't think  
10 the facts really demonstrate, after he knew she was  
11 13, this was not someone who then called the police  
12 or took her back to her foster home or tried to get  
13 her help and back into a safe situation. Instead,  
14 what he chose to do was hide her and hide himself.

15                 And it was only because the police really  
16 acted, fortunately, as they should have that she was  
17 recovered. Because if they hadn't stuck with it and  
18 done what they needed to do, perhaps she wouldn't  
19 have been recovered at all and this abuse would have  
20 simply continued. So in terms of the actual facts  
21 of the case, it's certainly within the heartland,  
22 and there is nothing -- there is nothing mitigating  
23 about this case whatsoever.

24                 And coupling that with the history and  
25 characteristics of this defendant, he has earned a

1 heavy guideline range, the guideline range that he  
2 faces at this point. And the Court has -- has, you  
3 know, been kind enough to even drop him from a  
4 criminal history category VI to a criminal history  
5 category V, which gives him some consideration, but  
6 still he has a hefty guideline range that he has  
7 deserved.

8 When you look at his criminal history, he  
9 has been consistently committing crimes, and not  
10 just your average crime, but I think in every  
11 description of his offenses that I read, there was  
12 some form of violence involved. And sometimes that  
13 violence was actually being committed against his  
14 own family members.

15 He was given opportunity after opportunity  
16 after opportunity to reform, to become a productive  
17 citizen, both as a juvenile and then once he reached  
18 the age of majority. And what's clear is, that's  
19 simply not the lifestyle that he wants to live. He  
20 chooses not to do that. He commits crimes while on  
21 probation, he committed this crime while he was  
22 still under a term of probation. And I think it  
23 simply demonstrates this defendant has no respect  
24 for the law, no respect for court rules, and he has  
25 victimized people every step of the way, and this

1 time the victimization resulted in the victimization  
2 and exploitation of a 13-year-old girl.

3 I would ask the Court to sentence him  
4 within the advisory guideline range and to a  
5 sentence that is appropriate for -- for this  
6 defendant and will show him that it is time that he  
7 respect the law and that this is the kind of crime  
8 that will be punished severely.

9 THE COURT: Thank you, Ms. Miller.

10 MS. MILLER: Thank you.

11 THE COURT: Mr. McLarty, if you and your  
12 client will come back up here.

13 Mr. Anderson, this is a case that I have a  
14 little bit more familiarity with than just what I  
15 know from the presentence report, because we had a  
16 lengthy hearing a while ago with the videotape and  
17 the officers -- of the officers' visit to your house  
18 and then their ultimate determination that, despite  
19 what your grandmother and your brother were telling  
20 them, that you were in fact there with the  
21 13-year-old in that locked bedroom.

22 So you start off with a high range in the  
23 guidelines, and justifiably so, 235 to 293 months,  
24 based upon the conduct here. And that is giving you  
25 some leeway with regard to this criminal history,

1 which I said I really am doing just to give you  
2 because I think the evidence supported the points.  
3 But we're going to start there since it's already so  
4 high.

5 So I have to consider the nature and  
6 circumstances of the offense, your history and  
7 characteristics. I want the sentence under our laws  
8 to promote respect for the law, reflect the  
9 seriousness of the offense, and provide just  
10 punishment, as well as to deter, to tell others to  
11 not engage in this, because the sentences are stiff,  
12 and give them that message by this sentence, protect  
13 the public. And all of the factors in that statute  
14 the Court is considering in deciding where this  
15 sentence should land.

16 When I look at you and your background, I  
17 would think it's undeniable that you were dealt a  
18 very unfair blow by the way you were raised with  
19 your mother being a drug addict. And thank goodness  
20 your grandmother was able to step in, and she seems  
21 pretty tough to me from watching her during that  
22 last hearing, but not the same. You started off  
23 with a negative there with a mother who was a drug  
24 addict, no question about that.

25 But I look at it, and I have had other

1 people with dire circumstances that they were born  
2 into, and I haven't seen that that was a justifiable  
3 cause for a reoccurrence over many years of violent  
4 behavior, even towards your brother.

5           I remember in the videotape in particular  
6 your brother, who is I think twice your size, was  
7 taking up for you with the two police officers,  
8 insisting to two armed police officers that you  
9 weren't there and the young lady was not there. And  
10 then, when they finally allowed the police officers  
11 in and determined after all of that time and  
12 resistance that your grandmother and your brother  
13 had given on your behalf that, in fact, it was just  
14 a big lie and you, in fact, were in the bedroom and  
15 your brother was crying when you came out. And I  
16 look at that as sort of characteristic of what I can  
17 see from your criminal history of how you pretty  
18 much treated your family, including your brother,  
19 who you have had a crime against, assaultive crime  
20 against in the past.

21           So despite the poor nature and the unfair  
22 nature of how you were brought up, it just doesn't  
23 justify the way you have acted. Nothing supports  
24 the violent behavior you have engaged in.

25           And then we get to this particular

1 offense, because all of what I am saying is well  
2 documented in the criminal history category, that  
3 this -- so there's no fear whatsoever when two armed  
4 police officers come to the house looking for the  
5 13-year-old. And then you have all of this defiant  
6 type of conduct against law enforcement in your  
7 background. But you have a 13-year-old that I  
8 think, by your own admission, you had sex with maybe  
9 nine times over that couple of days, and you're  
10 taking a picture of her with your video phone while  
11 you are engaging in sexual intercourse with her and  
12 then either wanting to sell her as a prostitute or  
13 at least charge your friend \$10, which sounds like  
14 you kept, if she would have oral sex with him.  
15 That's outrageous.

16 I understand what we are talking about  
17 with child pornography. Mr. McLarty, and I know  
18 Ms. Miller, we all agree about the horrific nature  
19 of those photographs, but this isn't one of those  
20 photograph gathering type of cases. Maybe the same  
21 statute, but we're talking about just a different  
22 permutation of that kind of behavior, in my view  
23 equally as bad, because it actually involved a live  
24 human being that you were victimizing.

25 So I don't see that this is outside of the

1 heartland of what I normally see. I would be  
2 looking at that more if we had a picture case with  
3 not as many pictures and hadn't been going on for  
4 such a long period of time.

5 When I look at all of this behavior --  
6 Mr. Anderson, you have been given so many chances.  
7 How in the world you got a deferred adjudication for  
8 aggravated assault after the other two offenses, an  
9 eight-year deferred adjudication is beyond me after  
10 the other two crimes, but you did. But you have  
11 been given chance after chance after chance, and you  
12 have -- you do have relatives that have been  
13 available to take care of you.

14 So I think that in the stream of things,  
15 despite the circumstances that you found yourself  
16 born into, that there isn't anything else in your  
17 favor in this case. And so when I weigh the pros  
18 and cons, it seems to me that to carry out the  
19 purposes of our sentencing statute and provide a  
20 reasonable sentence, not more than it should be to  
21 do that, that a 293 month sentence, which is at the  
22 high end of the guideline range as reduced by the  
23 Court, is the appropriate sentence to send a message  
24 and to promote respect for the law and to account  
25 for the behavior in this case and your background.

1                   So the sentence is 293 months in custody.  
2 Is there a mandatory term of supervised release  
3 here?

4                   MS. MILLER: It should be five years, Your  
5 Honor, mandatory minimum term of supervised release.

6                   THE COURT: Five-year term of supervised  
7 release, no fine, no restitution; a 100-dollar  
8 mandatory special assessment is also ordered.

9 Again, a five-year term of supervised release. And  
10 I'm going to -- I don't think I have a copy of them  
11 out here because they are somewhat complicated. I  
12 will get a copy out to Mr. Anderson, you and your  
13 counsel, so you can review them on a break and make  
14 sure that you understand them and agree to be bound  
15 by them. So we will take a short break until I can  
16 get you a copy of those, and then we will finish the  
17 sentencing.

18                   (Recess taken.)

19                   THE COURT: Mr. McLarty, if you and your  
20 client will come back up, please.

21                   Mr. Anderson, have you had a chance to  
22 review the terms of your supervised release?

23                   THE DEFENDANT: Yeah.

24                   THE COURT: Do you understand and agree to  
25 be bound by them?

1                   THE DEFENDANT: I understand.

2                   THE COURT: Mr. Anderson, I expect some  
3 respect out of you. You are in a court of law, and  
4 I want to hear from you, "Yes, Your Honor" or "No,  
5 Your Honor." Have you read the terms of supervised  
6 release?

7                   THE DEFENDANT: Yes.

8                   THE COURT: Yes, what?

9                   THE DEFENDANT: Yes, ma'am.

10                  THE COURT: Do you understand them and  
11 agree to be bound by them?

12                  THE DEFENDANT: Yes, ma'am.

13                  THE COURT: All right. You signed the  
14 last page here? Did you sign the last page?

15                  THE DEFENDANT: Yes, ma'am.

16                  THE COURT: All right. Mr. Anderson, you  
17 have a right to appeal this sentence. You have  
18 waived part of your right to appeal.

19                  Do you need to take a break so you can  
20 calm down?

21                  THE DEFENDANT: No. It's going to be  
22 appealed. I want to go back though.

23                  MR. McLARTY: Calm down. Just hang in  
24 there and listen to her questions and answer. You  
25 can't go back. You don't want these Marshals

1 jumping you. Got it?

2 We're ready, Your Honor.

3 THE COURT: Mr. Anderson, you have a right  
4 to appeal this sentence within the areas that you  
5 reserved in your appeal waiver. Mr. McLarty can  
6 talk about those with you. You waived a portion of  
7 your right to appeal, but you still have some  
8 rights. If you decide to appeal, you are entitled  
9 to court-appointed counsel to represent you at the  
10 appeal. The notice of appeal has to be filed within  
11 14 days of the date of the Court's judgment.

12 Mr. McLarty, if you will do the honors on  
13 that, I would appreciate that.

14 MR. MCLARTY: I will do that, Your Honor.

15 THE COURT: Is there anything else, any  
16 requests?

17 MR. MCLARTY: Your Honor, we would request  
18 a recommendation to Seagoville or a facility as near  
19 as possible to Dallas/Fort Worth.

20 THE COURT: I will so recommend.

21 Anything from the government?

22 MS. MILLER: The government is moving to  
23 dismiss Count 2 pursuant to the plea agreement in  
24 this case.

25 THE COURT: Count 2 is dismissed as will

1 be reflected in the minutes of this hearing.

2 MR. McLARTY: One other matter, Your  
3 Honor.

4 THE COURT: Yes.

5 MR. McLARTY: The Court, I'm sure, will  
6 recall the issue -- we had the issue arising during  
7 the hearing about, I guess it was the potential  
8 issues on the credibility of the witness. There was  
9 an ex parte submission to the Court.

10 THE COURT: I'm not sure what you're  
11 asking me. Go ahead and ask me the question.

12 MR. McLARTY: Basically what I would ask  
13 is if the Court would -- if there is any update on  
14 that information, any new information affecting the  
15 credibility of the witness, anything that's  
16 transpired since our motion to suppress hearing that  
17 would be pertinent and relevant to the issues  
18 presented to you in your ex parte conference with  
19 the government, that if there is any update, that  
20 that be provided to the Court so that it can be made  
21 part of the appellate record.

22 THE COURT: Your motion is granted. All  
23 right.

24 MR. McLARTY: Okay.

25 THE COURT: All right. If there is

1 nothing else, then, Mr. Anderson is remanded to  
2 custody, and we will be in recess.

3 (Court in recess at 2:42 p.m.)

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1 C E R T I F I C A T E

2 I, Shawnie Archuleta, CCR/CRR, certify  
3 that the foregoing is a transcript from the record  
4 of the proceedings in the foregoing entitled matter.

5 I further certify that the transcript fees  
6 format comply with those prescribed by the Court and  
7 the Judicial Conference of the United States.

8 This 18th day of September 2013.

9  
10  
11 s/Shawnie Archuleta  
Shawnie Archuleta CCR No. 7533  
12 Official Court Reporter  
13 The Northern District of Texas  
Dallas Division

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